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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 SHIGE TAKIGUCHI, FUMI NONAKA,
13 MITSUAKI TAKITA, TATSURO SAKAI,
14 SHIZUKO ISHIMORI, YUKO NAKAMURA,
15 MASAAKI MORIYA, HATSUNE HATANO,
16 and HIDENAO TAKAMA, Individually and
On Behalf of All Others Similarly Situated,

17 Plaintiff,

18 v.

19 MRI INTERNATIONAL, INC., EDWIN J.
FUJINAGA, JUNZO SUZUKI, PAUL
20 MUSASHI SUZUKI, LVT, INC., dba
STERLING ESCROW, and DOES 1-500,

21 Defendants.

22 Case No.: 2:13-cv-01183-HDM-NJK
[Hon. Howard D. McKibben]

23 **AMENDED ORDER GRANTING PRELIMINARY
APPROVAL OF CLASS ACTION SETTLEMENT
WITH DEFENDANTS (1) JUNZO SUZUKI, (2)
PAUL SUZUKI, (3) KEIKO SUZUKI,
(4) SUZUKI ENTERPRISES, INC. PROFIT
SHARING PLAN, (5) CATHERINE SUZUKI, AS
TRUSTEE OF THE JUNZO SUZUKI
IRREVOCABLE TRUST, (6) CATHERINE SUZUKI,
AS TRUSTEE OF THE KEIKO SUZUKI
IRREVOCABLE TRUST, (7) CATHERINE SUZUKI,
AS TRUSTEE OF THE JUNZO SUZUKI AND
KEIKO SUZUKI IRREVOCABLE TRUST (8)
SUZUKI ENTERPRISES, INC., (9) PUUIKENA
INVESTMENTS LLP, (10) CATHERINE SUZUKI,
AS TRUSTEE OF THE CATHERINE SUZUKI
IRREVOCABLE TRUST DATED MAY 10, 2013
AND (11) PAUL MUSASHI SUZUKI, AS TRUSTEE
OF THE PAUL MUSASHI SUZUKI IRREVOCABLE
TRUST DATED MAY 10, 2013.**

1 This matter is before the Court on Plaintiff's motion for preliminary approval of the proposed
2 class action settlement (the "Settlement") between the representative Plaintiffs Shige Takiguchi, et al. and
3 (1) Junzo Suzuki, (2) Paul Suzuki, (3) Keiko Suzuki, (4) Suzuki Enterprises, Inc. Profit Sharing Plan
4 ("the SEI PSP"), (5) Catherine Suzuki, as trustee of the Junzo Suzuki Irrevocable Trust, (6) Catherine
5 Suzuki, as trustee of the Keiko Suzuki Irrevocable Trust, (7) Catherine Suzuki, as trustee of the Junzo
6 Suzuki and Keiko Suzuki Irrevocable Trust, (8) Suzuki Enterprises, Inc., (9) Puuikena Investments LLP,
7 (10) Catherine Suzuki, as trustee of the Catherine Suzuki Irrevocable Trust dated May 10, 2013 and (11)
8 Paul Musashi Suzuki, as trustee of the Paul Musashi Suzuki Irrevocable Trust dated May 10, 2013
9 (collectively the "Settling Defendants"), as set forth in the Settlement Agreement attached hereto as
10 Exhibits A. Having considered the Motion, the Settlement Agreement, the proposed form of notice to the
11 Class, the pleadings and other papers filed in these Actions, and for good cause shown, IT IS HEREBY
12 ORDERED as follows:

13 1. Unless otherwise defined herein, all terms that are capitalized herein shall have the
14 meanings ascribed to those terms in the Settlement Agreement.

15 2. The Court finds that the proposed Settlement with Settling Defendants for approximately
16 \$13,100,000 is sufficiently fair, reasonable and adequate such that it is hereby preliminarily approved.
17 Notice of the Settlement should be provided to the Settlement Class and a hearing should be held as set
18 forth below. The Court finds that the Settlement Agreement appears to be the product of arm's length,
19 informed, non-collusive negotiations between experienced and knowledgeable counsel who have actively
20 prosecuted and contested this litigation for over three and a half years. In accordance with the schedule
21 outlined below, Class Counsel shall seek entry of an Order and Final Judgment as to the Settling
22 Defendants.

23 3. The Court hereby grants Plaintiffs' request to defer distribution of the Settlement Funds
24 and propose a Plan of Allocation until final resolution of the case or at a later time, upon approval by the
25 Court.

26 4. The Court hereby conditionally certifies the Class as to the Uncertified Settling
27 Defendants, subject to final approval of the Settlements pursuant to the following FINDINGS under Fed.
28 R. Civ. P. 23:

1 a. The Court previously certified the Class as to Junzo Suzuki and Paul Suzuki on
2 March 21, 2016, and as subsequently amended on May 6, 2016. The causes of actions asserted against
3 the Uncertified Settling Defendants are the same as those asserted against the certified defendants.

4 b. As discussed below, Plaintiffs have satisfied the requirements for class
5 certification under Rule 23(a) and Rule 23(b)(3).

6 c. Rule 23(a) requires: “(1) the class is so numerous that joinder of all members is
7 impracticable; (2) there are questions of law and fact common to the class; (3) the claims or defenses of
8 the representative parties are typical of the claims or defenses of the class; and (4) the representative
9 parties will fairly and adequately protect the interests of class.” FRCP 23.

10 d. The settlement class, estimated at 8,800, is sufficiently numerous to satisfy the
11 numerosity requirement.

12 e. Plaintiffs have shown that there are common questions of law and fact.
13 Commonality is established where there is a “common contention” of such a nature that it is capable of
14 class-wide resolution in “one stroke.” *Wal-Mart Stores, Inc. v. Dukes* (2011) U.S. 131 S.Ct. 2541, 2551.
15 As the Court has already ruled, here, each class member suffered the same injury and the same evidence
16 will be used to prove the existence of a Ponzi scheme, the falsity of the representations, each defendant’s
17 role and knowledge in the scheme, and whether the funds held by each defendant are the proceeds of
18 MRI’s Ponzi scheme, entitling the class to the assets under the principles of constructive trust, unjust
19 enrichment and fraudulent transfer. The Plaintiffs allege that, like Junzo and Paul Suzuki, Keiko Suzuki
20 was also a control person and that MRI’s entire common course of conduct was attributable to Keiko
21 Suzuki. Since the Court has already ruled that the commonality requirement has been satisfied as to
22 Junzo Suzuki and Paul Suzuki, it stands to reason that the class should be similarly certified as to Keiko
23 Suzuki. Similarly, the Court has already determined that there is a common question of law and fact as
24 whether the class is entitled to the assets under the theories of fraudulent transfer, constructive trust and
25 unjust enrichment, meaning that Plaintiffs have also satisfied the commonality requirements as to the
26 remaining Settling Defendants.

27 f. Plaintiffs have also shown that their claims are typical of the class. Typicality is
28 found where other class members have the same or similar injury as the lead plaintiff; where the action is

1 based on conduct which is not unique to the named plaintiff; and where other class members have been
2 injured by the same course of conduct as the named plaintiff. *Wolin v. Jaguar Land Rover North Am.,*
3 *LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010); *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir.
4 1992). Plaintiffs and the class members all suffered from the same injury, namely, the loss of their
5 investments as a result of defendants' operation of a Ponzi scheme.

6 g. Finally, Plaintiffs and Class Counsel have shown that they will adequately protect
7 the interest of the class. The Court has already determined that the Yuko Nakamura is an adequate class
8 representative because her claims are typical, her interests are not antagonistic to the class, and she has
9 suffered a substantial loss. Further, the Court has also already determined that Class Counsel has
10 vigorously prosecuted this action and can adequately represent the proposed class.

11 h. Rule 23(b)(3) requires that the "questions of law and fact common to class
12 members predominate over any questions affecting only individual members, and that a class action is
13 superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ.
14 P. 23(b)(3). The Court finds that common issues predominate as to all twelve causes of action, including
15 the causes of action for § 10(b) and Rule 10B-5 claims. Because Plaintiffs allege that the Defendants
16 repeatedly made the same core misrepresentations throughout the class period, there was no meaningful
17 difference between statements made by Junzo and Paul Suzuki to individual investors to justify requiring
18 individual proof. Since the allegations set forth against Keiko Suzuki parallel those made against Junzo
19 and Paul Suzuki, there is no reason that individual issues should not predominate as to Keiko Suzuki.
20 For the unjust enrichment cause of action, whether the defendants' receipt and retention of money is an
21 issue that may be answered on a class-wide basis. With respect to the constructive trust cause of action,
22 no individual questions exist to preclude class certification.

23 i. Rule 23(b)(3) requires that the class action must be superior to other available
24 methods for fairly and efficiently adjudicating the controversy. Fed. R. Civ. P. 23(b)(3). A class action
25 is superior to individual litigation, because requiring individual plaintiffs to travel from Japan to Nevada
26 to prosecute their case would be significantly burdensome, the majority of the assets held by the various
27 Defendants are located in Nevada and the United States, and requiring individuals to each file their own
28 case would be extremely burdensome to the Court. Therefore a class action is a superior method to

1 adjudicate the controversy with respect to the Uncertified Settling Defendants.

2 5. The Court approves the Notice of Proposed Settlement of Class Action (the “Settlement
3 Notice”), and finds that the dissemination of the Settlement Notice substantially in the manner and form
4 set forth in the Settlement Agreements complies fully with the requirements of Federal Rule of Civil
5 Procedure 23 and due process of law, and is the best notice practicable under the circumstances.

6 6. The notice procedures set forth in the Settlement Agreement are hereby found to be the
7 best practicable means of providing notice of the Settlement Agreement under the circumstances and,
8 when completed, shall constitute due and sufficient notice of the proposed Settlement Agreement and the
9 Final Approval Hearing to all persons affected by and/or entitled to participate in the Settlement
10 Agreements, in full compliance with the applicable requirements of Federal Rule of Civil Procedure 23
11 and due process.

12 7. The Court hereby appoints the Japanese attorney group which represents the interests of
13 certain MRI victims in Japan (the “MRI Higaibengodan”) as the Notice Administrator. Consistent with
14 the Settlement Agreement, the Notice Administrator shall (1) disseminate the Notice of Settlement to the
15 Class with the cover letter; (2) cause the Notice of Settlement to be published on the National Consumer
16 Affairs of Japan’s website; and (3) make relevant documents in English and Japanese accessible to the
17 Class on the MRI Higaibengodan’s website. Pursuant to the Settlement Agreement, the Notice
18 Administrator’s costs shall be paid out of the Settlement Fund, subject to Court review and approval.

19 8. The Notice Administrator shall cause the Settlement Notice to be mailed, postage prepaid,
20 to all Class Members on or before March 4, 2018. The Notice Administrator shall also cause the
21 Settlement Notice to be published on the National Consumer Affairs of Japan’s website. The Notice
22 Administrator shall file with the Court an Affidavit of Compliance with Notice Requirements on or
23 before April 22, 2018. All costs incurred in disseminating Notice and administering the Settlement shall
24 be paid from the Settlement Fund. Class Counsel will seek Court approval for reimbursement of the
25 notice costs prior to the Final Approval Hearing.

26 9. The Court finds that Class Members had sufficient opportunity to opt-out of the Class
27 when they were notified about the certification of the class in June 2016, and in fact 34 investors opted-
28 out of the Class, and therefore Class Members will not be provided with an opportunity to opt-out of this

1 Settlement.

2 10. Class Counsel shall file their motion for payment of attorneys' fees and costs no later than
3 April 4, 2018.

4 11. Upon entry of the Final Approval Order and Judgment, all Class Members will be bound
5 by all the terms and provisions of the Settlement Agreement, including the Release provisions, whether
6 such Class Member objected to the Settlement and whether or not such Class Member applied for or
7 received consideration under the Settlement Agreement.

8 12. A final telephonic hearing on the Settlement Agreement ("Final Approval Hearing") shall
9 be held before the Court at 9:00 a.m. on May 22, 2018 in Courtroom 4 of United States District Court of
10 Nevada, 400 South Virginia Street, Reno, Nevada 89501. Participants shall call AT&T no later than five
11 minutes prior to the hearing at 1 (877) 336-1839 and provide Access Code 3246567 with Security Code
12 0376.

13 13. At the Final Approval Hearing, the Court will consider (a) the fairness, reasonableness,
14 and adequacy of the partial Settlement Agreements and whether the Settlement Agreements should be
15 granted final approval by the Court; and (b) entry of a Final Approval Order and Judgment including the
16 Settlement Release. Class Counsel's application for payment of costs shall also be heard at the time of
17 the hearing.

18 14. The date and time of the Final Approval Hearing shall be subject to adjournment by the
19 Court without further notice to the Class Members, other than that which may be posted by the Court.
20 Should the Court adjourn the date for the Final Approval Hearing, such adjournment shall not alter the
21 deadlines for mailing of the Notice, nor the deadlines for submissions of settlement objections, claims,
22 requests for exclusion, or notices of intention to appear at the Final Approval Hearing unless those dates
23 are explicitly changed by subsequent Order.

24 15. Class Members may, but need not, enter an appearance through his or her own attorney.
25 For Settlement purposes, Class Counsel will continue to represent Class Members who do not timely
26 object and do not have an attorney enter an appearance on their behalf.

27 16. Any Class Member who did not elect to be excluded from the Class may, but need not,
28 submit comments or objections to (a) the Settlement Agreement; (b) entry of a Final Approval Order and

1 Judgment approving the Settlement Agreement; and (c) Class Counsel's application for payment of
2 attorneys' fees and costs, by mailing a written comment or objection to the addresses provided by the
3 Claims Administrator in the Notice.

4 17. Any Class Member making an objection (an "Objector") must sign the objection
5 personally, even if represented by counsel, and provide the Class Member's name and full residence or
6 business address and a statement signed under penalty of perjury that the Class Member was an employee
7 and member of the Settlement Class. An objection must state why the Objector objects to the Settlement
8 Agreement and provide a basis in support, together with any documents such person wishes to be
9 considered in support of the objection. If an Objector intends to appear at the hearing, personally or
10 through counsel, the Objector must include with the objection a statement of the Objector's intent to
11 appear at the hearing. The objection must also contain a detailed list of any other objections by the
12 Objector, as well as by the Objector's attorney, to any class action settlement submitted to any court in
13 the United States in the previous five years.

14 18. Objections, along with any statements of intent to appear, must be postmarked no later
15 than April 25, 2018, and mailed to the addresses provided in the Notice. If counsel is appearing on
16 behalf of more than one Class Member, counsel must identify each such Class Member and each such
17 Class Member must have complied with this Order.

18 19. Only Class Members who have filed and served valid and timely objections accompanied
19 by notices of intent to appear shall be entitled to be heard at the Final Approval Hearing. Any Class
20 Member who does not timely file and serve an objection in writing in accordance with the procedure set
21 forth in the Settlement Notice and mandated in this Order shall be deemed to have waived any objection
22 to (a) the Settlement Agreements; (b) entry of a Final Approval Order and Judgment; and (c) Class
23 Counsel's application for payment of attorneys' fees and costs, whether by appeal, collateral attack, or
24 otherwise.

25 20. Class Members need not appear at the hearing or take any other action to indicate their
26 approval.

27 21. Upon entry of the Final Approval Order and Judgment, all Class Members will be
28 enjoined from proceeding against the Settling Defendants and all other Released Parties with respect to

1 all of the Released Claims, as set forth in the Settlement Agreement.

2 22. The schedule by which the events referenced above shall occur as follows:

Event	Date
Notice of Class Action Settlement to Be Mailed and Posted on Internet	March 4, 2018
Motion for Attorneys' Fees and Costs Filed by Class Counsel	April 4, 2018
Objection Deadline	April 25, 2018
Notice Administrator Affidavit of Compliance with Notice Requirements	April 22, 2018
Motion for Final Approval	May 1, 2018
Responses or Opposition to the Motion for Final Approval	May 8, 2018
Replies in Support of Motions for Final Approval, Attorneys' Fees and Costs	May 15, 2018
Final Approval Hearing	May 22, 2018 at 9:00 a.m.

19 23. All further proceedings as to Settling Defendants are hereby stayed and all deadlines are
20 vacated, except for any actions required to effectuate or enforce the Settlement Agreement.

21 24. In the event the Settlement Agreement and the proposed settlement is terminated pursuant
22 to the applicable provisions of the Settlement Agreement, the Settlement Agreement and all related
23 proceedings shall, except as expressly provided in the Settlement Agreement, become void and shall have
24 no further force or effect, and Class Plaintiffs shall retain all of their current rights against Settling
25 Defendants and any other Released Parties shall retain any and all of their current defenses and
26 arguments thereto so that Settling Defendants may take such litigation steps and shall proceed as if the
27 Settlement Agreement had not been executed.

28 25. Neither this Order nor the Settlement Agreement, nor any other Settlement related

1 document nor anything contained or contemplated therein, nor any proceedings undertaken in accordance
2 with the terms set forth in the Settlement Agreement or herein or in any other Settlement-related
3 document, shall constitute, be construed as or be deemed to be evidence of or an admission or concession
4 by the Settling Defendants as to (a) the validity of any claim that has been or could have been asserted
5 against either or as to any liability by either as to any matter encompassed by the Settlement Agreements.

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7 Dated: January 11, 2018



8 HOWARD D. MCKIBBEN
9 United States District Judge

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